



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

RELIABILITY AND SECURITY

IN THE MATTER OF ALLEGED VIOLATION)	
OF THE UNDERGROUND FACILITY)	ORDER
PROTECTION ACT, N.J.S.A. 48:2-73 <u>ET SEQ.</u>)	
)	DOCKET NO. GS04070601-K

(SERVICE LIST ATTACHED)

BY THE BOARD¹:

The Board of Public Utilities ("Board") has jurisdiction to oversee and enforce the provisions of the Underground Facility Protection Act ("the Act") pursuant to the provisions set forth in N.J.S.A. 48:2-73 et seq. The primary purpose of the Act is to establish the One-Call Damage Prevention System for the protection of underground facilities that are used for the conveyance of water, forced sewage, telecommunications, cable television, electricity, oil, petroleum products, gas, optical signals, traffic control, or for the transportation of a hazardous liquid. In declaring its findings and the purpose of the Act, the Legislature stated, in pertinent part:

[T]hat damage to underground facilities caused by excavation and the discharge of explosives poses a significant risk to the public safety; that such damage to underground natural gas facilities poses a substantial risk to the public safety; and that the implementation of a comprehensive One-Call Damage Prevention System can substantially reduce the frequency of damage caused by these activities.

The Legislature therefore determines that it is in the public interest for the State to require all operators of underground facilities to participate in a One-Call Damage Prevention System and to require all excavators to notify the One-Call Damage Prevention System prior to excavation or demolition. N.J.S.A. 48:2-74.

The Act defines "excavator" as "any person performing excavation or demolition," while the term "operator" is defined as "a person owning or operating, or controlling the operation of, an underground facility . . ." N.J.S.A. 48:2-75. The One-Call Damage Prevention System ("the System") coordinates communication and responsive action between these two groups of persons. N.J.S.A. 48:2 -80, -82.

The Act normally subjects violators of its provisions to civil penalties of not less than \$1,000 and not more than \$2,500 per violation per day, N.J.S.A. 48:2-88, and increases this penalty in the event it involves "a natural gas underground pipeline or distribution facility, or a hazardous liquid

¹ Commissioner Frederick F. Butler did not participate in the deliberations or vote on this matter.


underground pipeline or distribution facility" to \$25,000 per violation, per day, for a maximum penalty of \$500,000, N.J.S.A. 48:2-86(c). In addition, the violator may be assessed the cost of any Board investigation, inspection or monitoring survey which leads to the establishment of a violation and for the reasonable costs of preparing and litigating the matter. N.J.S.A. 48:2-86(b)(2). The Board, however, has been granted explicit authority to compromise any civil penalty imposed pursuant to this subsection. N.J.S.A. 48:2-86(c). The criteria used by the Board in determining a compromise penalty includes "the nature, circumstances, and gravity of the violation; the degree of the violator's culpability; any history of prior violations; the prospective effect of the penalty on the ability of the violator to conduct business; any good faith effort on the part of the violator in attempting to achieve compliance; the violator's ability to pay the penalty; and other factors the board determines to be appropriate." Ibid.

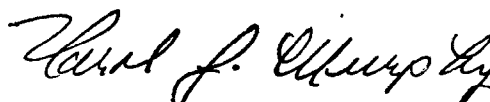
On September 15, 2003 InterCounty Paving Association ("InterCounty") was excavating on River Road in Chatham. InterCounty had complied with the Act by calling three or more days earlier and had received a One Call ticket for its excavation. While digging, InterCounty struck a PSE&G gas main, resulting in a fire that destroyed overhead utility lines. Upon investigation, Staff determined that PSE&G had not properly marked out its gas line. Staff contacted PSE&G, and an Offer of Settlement in lieu of pursuing formal enforcement action was presented, with a proposed offer of \$18,000. The Offer of Settlement was predicated upon the fact that the failure to properly mark impacted only property and upon assurances of future compliance. On December 31, 2003, Staff received the signed offer and payment in the amount of \$18,000. Staff provisionally approved the Offer and accepted the payment.


After due consideration of the record in this case, the Board HEREBY FINDS that the Offer of Settlement in the amount of \$18,000 is an appropriate and proper compromise under N.J.S.A. 48:2-86(c). As such, the Board HEREBY APPROVES this Offer of Settlement as presented and attached.

DATED: 7/23/04

BOARD OF PUBLIC UTILITIES
BY:



JEANNE M. FOX
PRESIDENT


CAROL J. MURPHY
COMMISSIONER


CONNIE O. HUGHES
COMMISSIONER


JACK ALTER
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

**IN THE MATTER OF ALLEGED VIOLATION OF THE
UNDERGROUND FACILITY PROTECTION ACT,
N.J.S.A. 48:2-73 ET SEQ.**

DOCKET NO. GS04070601-K

SERVICE LIST

Will Carey, Regulatory Leader
PSE&G
80 Federal Park Plaza Mall
Newark, New Jersey 07102

James P. Giuliano, Director
Division of Reliability & Security
New Jersey Board of Public Utilities
Two Gateway Center, 9th Floor
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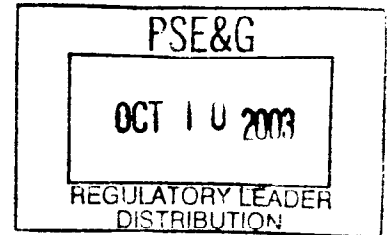
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Secretary of the Board
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Two Gateway Center, 8th Floor
Newark, New Jersey 07102



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102



October 02, 2003

NAME: PSE&G (G)
80 PARK PLAZA T-13, P.O. BOX 570
NEWARK, NJ, 07102

NOTICE OF PROBABLE VIOLATION

DATE OF VIOLATION: 09/15/2003
LOCATION: RIVER ROAD, CHATHAM TWP.
OPERATOR OF THE FACILITY: PSE&G (G)
BRIEF DESCRIPTION OF POSSIBLE VIOLATION: DID NOT PROPERLY MARK
STATUTE, REGULATION, OR ORDER VIOLATED: N.J.S.A. 48:2-80.a. (2)

OC #: GOC2003-0094

To whom it may concern:

1. You are hereby notified, pursuant to N.J.A.C. 14:7-2.3, of the above-cited probable violation of a law, rule, regulation or order pertaining to natural gas pipeline safety. Pursuant to N.J.S.A. 48:9-33, the New Jersey Board of Public Utilities (Board) has jurisdiction to assess civil administrative penalties against any person who has violated the provisions of any law, rule, regulation or order relating to natural gas pipeline safety.
2. The Board, pursuant to 49 U.S.C. sec. 60105, has certified to the United States Department of Transportation that it will administer an inspection and enforcement program of intrastate gas pipeline facilities with respect to the federal natural gas pipeline safety regulations, codified at 49 C.F.R. sec. 192.
3. The Board, pursuant to its authority under N.J.S.A. 48:2-1 et seq. has adopted N.J.A.C. 14:6-1.1, which adopts by reference the provisions of 49 C.F.R. sec. 192.
4. The Board has jurisdiction to oversee and enforce the provisions of the Underground Facility Protection Act (Act), N.J.S.A. 48:2-73 et seq. pursuant to N.J.S.A. 48:2-86, the Board may assess civil administrative penalties against any person who it determines has violated any provision of the Act, or any rule, regulation or order adopted pursuant to the Act, with respect to a natural gas underground pipeline or distribution facility.

5. Pursuant to N.J.S.A. 48:9-33 and/or N.J.S.A. 48:2-86, for violations of any law, rule, regulation or order pertaining to natural gas pipeline safety, including the Act, the Board may assess civil administrative penalties not to exceed \$25,000 for each violation for each day the violation continues, except that the maximum penalty may not exceed \$500,000 for any related series of violations.

6. Pursuant to N.J.A.C. 14:7-2.3(b), you are directed to respond in writing to this Notice of Probable Violation within fourteen (14) days of your receipt of this Notice. Your response may include a request for an informal conference to discuss this matter with the Division of Service Evaluation of the Board. Your response must be sent to

Douglas R. Ziemba Sr., Chief Engineer
Board of Public Utilities
Division of Service Evaluation
Two Gateway Center
Newark, NJ 07102

7. If you do not respond to this Notice of Probable Violation within the time provided by law, the Board may issue an Administrative Order and Notice of Civil Administrative Penalty Assessment against you, pursuant to N.J.A.C. 14:7-2.4. Please also be advised that the Board may issue an Administrative Order and Notice of Civil Administrative Penalty Assessment against you at any time pertaining to the probable violation cited herein. The issuance of this Notice of Probable Violation shall not affect the availability of any other enforcement provision provided for by law, in connection with the probable violation cited herein.

OFFER OF SETTLEMENT

8. However, you may resolve this matter now, in lieu of the response procedure set forth in paragraph 6. In your case, Board's staff offers you a compromise and settlement in the amount of \$18,000. If you accept this compromise and settlement, Board's staff will recommend that this matter **involving only the specific violation listed above** be terminated by formal Board acceptance of this compromise and settlement at a regularly-scheduled public agenda meeting. You are advised that you have the right to a hearing in this matter and that, if you accept this settlement offer, you are waiving your right to such a hearing or to otherwise contest this matter through the administrative or judicial processes.

Should you wish to accept this offer of compromise and settlement as outlined above, signify your agreement to the terms of this compromise offer by signing in the space provided below, and kindly send your check in the amount of \$18,000, made payable to **TREASURER, STATE OF NEW JERSEY**, to:

Joseph J. Potena, Chief Fiscal Officer
Board of Public Utilities
44 South Clinton Avenue
7th Floor, P.O. Box 350
Trenton, New Jersey 08625

Attn: One-Call Enforcement

You must write the OC Case Number, as indicated above, on your check.

This offer of compromise and settlement made to you is without prejudice as to the position of the State of New Jersey or any agency or subdivision thereof if other violations are present. This offer of compromise is for settlement purposes only, and only applies to the specific incident listed herein.

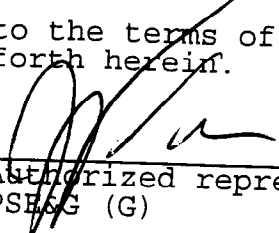
If you do not accept this settlement offer, you must file a response to this Notice within 14 days, as explained in paragraph 6. If you have any questions concerning this matter, please contact Joe Bubba at (973) 648-2045.

Date:

Douglas R. Ziemba Sr., Chief Engineer
Board of Public Utilities

I hereby accept and consent to the terms of the offer of compromise and settlement as set forth herein.

Date:


Authorized representative of
PSE&G (G)

GOC2003-0094

cc: Joseph J. Potena